



LEGISLATIVE UPDATE

COVERING CRIMINAL JUSTICE LEGISLATIVE ISSUES

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DEPARTMENT OF PUBLIC ADVOCACY

GOVERNOR HELPS OPEN MURRAY PUBLIC DEFENDER'S OFFICE

Ernie Lewis, Public Advocate

Governor Paul E. Patton was the honored guest on August 31, 2000, at the opening of the state's first public defender's office located on the campus of a regional university. In a speech before 100+ court officials, legislators, other dignitaries and guests, he stated that "this Administration is proud to formally recognize the opening of the Murray Office which represents a significant step in our goal of delivering services through full-time offices across the Commonwealth."

"There is a lot of progress occurring at the Department of Public Advocacy due in large part to the actions of the last two General Assemblies. Well over a year ago, I became aware of the chronic underfunding problems that this state agency was experiencing when *The Blue Ribbon Group on Indigent Defense in the 21st Century* chaired by Secretary Robert Stephens and former State Representative Mike Bowling came to me. They told me that the Kentucky public defender system was significantly underfunded, that Kentucky public defenders were paid the lowest salaries of any public defenders in the nation, and that they had caseloads that were far too high. *The Blue Ribbon Group* persuaded me to commit to a higher level of funding for the Department of Public Advocacy. I included in my budget proposal to the 2000 General Assembly an additional \$10 million in order to improve this important part of the criminal justice system."

"We celebrate here today a partnership which is innovative and unique—a partnership in which a regional university and a state agency have joined forces to provide services to the people of Calloway and Marshall Counties. Murray State University (MSU) has graciously offered their facilities to the Department of Public Advocacy. The Department has in turn offered the students of MSU a unique opportunity to learn about and get hands-on experience regarding today's criminal justice system."

"The Department of Public Advocacy began delivering services through the Murray Public Defender's Office on July 1,

2000. This is DPA's 26th full-time office now covering 84 of Kentucky's 120 counties. This office provides services in Calloway and Marshall Counties at the present time. By April of 2002, the office will cover Graves,

Fulton, and Hickman Counties as well. This office was funded by the 2000 General Assembly. Once this office is fully operational, all of the counties in the Purchase Area of the state will be covered by a full-time office in either Paducah or Murray. Conflict services will be provided by private lawyers on contract with DPA. By the end of this biennium, 109 of Kentucky's 120 counties will be covered by a full-time office. This represents a major advance in the quality and efficiency of services being provided to citizens and the courts in that part of Kentucky."

On hand was President of Murray State University, Kern Alexander, who welcomed DPA to the Murray campus. He also introduced to the crowd the 7 interns from Murray State

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Gov. Paul Patton

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who will be working with the DPA. At first, 7 interns will be working out of the Murray Office. Their work will include hands-on work in capital cases, as well as assisting the staff of the Murray Office to process the caseload. These interns are all criminal justice majors, and this experience should assist them greatly to meet their educational goals. Ultimately, it is hoped that many more interns will be placed in the Murray internship program.

Governor Patton also recognized the significant role Senator Bob Jackson played in the creation of the Murray Office. "We appreciate the support that we have received from Senator Bob Jackson in making this partnership happen, as well as from local judges, prosecutors, and other parts of the criminal justice system in the opening of this office." Senator Bob Jackson stated that "I am extremely pleased that this partnership between DPA and Murray State University has worked. This partnership will be good for far Western Kentucky and individuals served by DPA. This is a perfect example of how state government can work in an efficient manner to benefit the taxpayers of the Commonwealth."

The opening of the Murray Office was a day of celebration of much progress for the Purchase Area and for indigent citizens throughout Kentucky. ■

Governor Paul E. Patton's Remarks at the Grand Opening Ceremony of the Murray Department of Public Advocacy Office

(August 31, 2000) Thank you. It is certainly a pleasure for me to be here because this is a little bit of a special occasion – a cooperative effort to serve the people of Kentucky from our Department of Public Advocacy and Murray State University. This is one more demonstration of the fact that our universities understand that they have a comprehensive mission to serve Kentucky in a whole lot of different ways and certainly no institution is doing a better job of it than Murray State University and Dr. Alexander and your Board. Thank you all for looking at the big picture and looking at your mission of service to all Kentuckians in a whole lot of different ways and of course the work of the Public Advocates is very very important.

One of the great things about this nation is that we believe that we will get justice. We have a great belief in justice for all and in order to try to administer justice as completely and accurately as we can we have a very complex system with lots of safeguards, hopefully for the victims and the accused. But, it does require help in the navigation of that system. It does require the assistance of someone that is trained and has the knowledge to help an individual get through the system – an attorney and of course they have to be paid, they have to make a living. If you happen to be in a situation where you have to go through the court system and you can't afford an attorney, it is vital if our system is going to work, if our system is going to work for all, then all have to have access to competent and adequate representation when they come before the courts of justice. And of course that is what our Department of Public Advocacy does and while most of us hopefully will never come into direct contact with the Department of Public Advocacy we ought to be happy and we ought to be concerned about it being able to do its job.

And that was a situation that we faced four years ago, five years ago almost, and we felt like that perhaps a new direction, perhaps a new emphasis, perhaps focusing on all of the various cases not just the high profile cases that they were responsible for was the appropriate way. And at that time, we made a change and we appointed Ernie Lewis to the position as director of that Department and I am pleased to announce that as of yesterday, Mr. Lewis has been reappointed to another four year term. So Ernie, that is an indication of the confidence that we have in the leadership that he and the people that he works with have given to this organization.

There is a lot of progress as Ernie talked about occurring in the Department of Public Advocacy due in large part to the actions of the last two sessions of the General Assembly and I certainly want to emphasize that these as well as the other efforts of our Commonwealth is a joint venture almost always between the Executive Branch - our administration - and the members of the General Assembly. We have Senator Jackson going to speak in a moment and he is going to acknowledge the other members of the General Assembly that are here but let me add my acknowledgment to the very very important role that they played in making sure that these and other programs are brought to the assistance of Kentucky.

It was two years ago when I became aware of the very very severe underfunding of this agency because of the work of a *Blue Ribbon Group on Indigent Defense in the 21st Century* that was chaired by now Secretary of Justice Robert Stephens and former State Representative Mike Bowling. They came to us and talked to us about the Kentucky public defender system and how underfunded that it was and that the Kentucky public defenders were paid the lowest salaries of any

defenders in the nation and they had caseloads that were far far excessive. This group persuaded us to commit a higher level of funding to the Department of Public Advocacy that Ernie has talked about. And we did include an additional ten million dollars which was a substantial increase and the General Assembly did approve that.

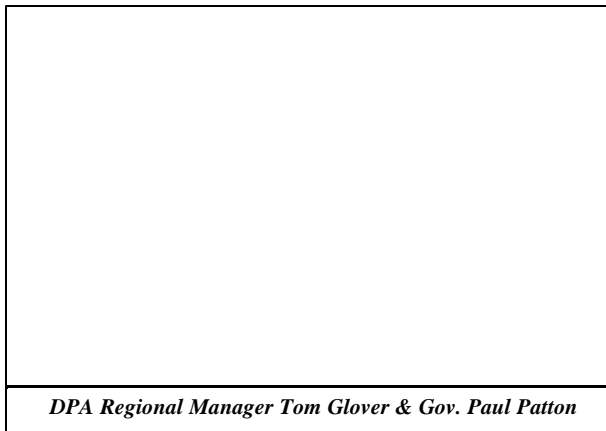
Today, we celebrate an innovative and unique partnership in which a regional university and a state agency have formed forces to provide services to the people of Calloway and Marshall Counties. Murray State University has graciously offered their facilities to the Department of Public Advocacy and in turn the Department has offered the students at Murray State a unique opportunity to learn about and get hands on experience regarding today's criminal justice system. I am also proud to announce today that public defenders throughout the Commonwealth are receiving a substantial pay raise. I am especially pleased that the public defender starting salary will rise from \$23,388 to \$28,485.00 and a starting salary will increase to almost \$30,000 in the second year of this biennium. Experienced attorneys will also be receiving pay raises of 8% each year of the biennium. These raises are effective August 15, 2000, but retroactive to July 1, 2000.

It is important to pay our public servants adequately. Public defenders serve in every court in the Commonwealth, defending children, the mentally ill, and people charged with crimes who unable to afford their own attorney. This salary increase will help these defenders earn a living wage while at the same time allowing the Department of Public Advocacy the ability to recruit and retain highly qualified public defenders.

So once again, it is a pleasure for me to be here in Calloway County and in the Purchase Area and it is a pleasure for me to stand up with the members of the General Assembly and support one of the vital services of our Commonwealth and to celebrate this unique joining of our university and public defenders to serve the people of Kentucky. Thank you for allowing me to be a part of it. ■



Ribbon Cutting at Murray Grand Opening



DPA Regional Manager Tom Glover & Gov. Paul Patton

Ernie Lewis Reappointed Kentucky Public Advocate

(Frankfort, Kentucky, August 31, 2000). Governor Paul E. Patton announced the reappointment of Erwin W. Lewis as Public Advocate for the State Department of Public Advocacy (DPA) for a second four-year term expiring on July 2, 2004. Lewis was initially appointed Public Advocate by Governor Patton in October of 1996. Lewis heads the Department of Public Advocacy, the state agency responsible for administering criminal defense services for all eligible indigent citizens of the Commonwealth accused of or convicted of a crime.

When Lewis became Public Advocate in 1996 after serving 19 years as a trial, appellate and post-conviction litigator, he set out 3 major goals:

- ☐ conversion to full-time delivery of representation across Kentucky,
- ☐ full funding of capital defense,
- ☐ and having the defender perspective heard at the table where criminal justice issues are discussed and decided.

When he was sworn into office in 1996, Lewis said, "I ask you to judge me by the vision of the right to counsel." Lewis' accomplishments over the past four years include the increased professionalization of Kentucky's defenders with an increase in salaries and a reduction in caseloads and the coverage of more counties by full-time defenders. When he began in 1996 there were 47 counties covered by full-time defenders. By the end of 2002, 109 counties will be covered by defenders, a 130% increase in 6 years. Defender funding has risen from \$16.8 million in 1996 to \$28 by the end of the biennium. Starting salaries for attorneys have risen from \$23,388 in 1996 to \$32,500 in 2001.

These accomplishments were propelled by Lewis' creation of the *Kentucky Blue Ribbon Group on Improving Indigent Defense for the 21st Century*, a group of prominent leaders who met in the Spring of 1999 to study Kentucky's indigent defense services with the consultation of Robert Spangenberg, a national expert on indigent defense systems. Lewis and the *Blue Ribbon Group* were successful in persuading the Governor to seek and the General Assembly to provide an additional ten million dollars during the biennium (\$4 million the first year and \$6 million the second year).

Lewis has also upgraded significantly the capital litigation resources to better meet the demands that capital litigation requires. He has also brought Kentucky defender perspectives to the state's discussion and decision-making on criminal justice issues through a variety of ways, especially

through his service on the Kentucky Criminal Justice Council.

At a grand opening ceremony of the Department's Murray Office on August 31, 2000, Governor Patton said, "I am pleased to announce that as of yesterday, Ernie Lewis has been reappointed to another four-year term. That is an indication of the confidence that we have in the leadership that he and the people he works with have given this organization."

In reflecting on the reappointment, Lewis said, "I thank Governor Patton for his confidence in me and for giving me the opportunity to continue to move the state's indigent defense program forward."

At the September 22, 2000 Quarterly Leadership education program, Lewis announced his reappointment of his leadership team, his deputy, Ed Monahan, his general counsel Larry Beale, and his 4 division directors, Dave Norat, Law Operations, George Sornberger, Trials, Rebecca Diloreto, Post-Trials, and Maureen Fitzgerald, Protection and Advocacy. ■

Ernie Lewis, Public Advocate, at MSU

The Importance of Systemic Criminal Justice Planning and Collaboration Within Kentucky's Criminal Justice System

Kim M. Allen

The Fragmented Nature of the Criminal Justice System

While it has long been debated whether the criminal justice system functions like a true "system" in reality, it is readily apparent that changing a policy or practice in one component of the system directly impacts the remaining components. It is also apparent that the cost and size of our criminal justice system has more to do with policy decisions made at critical points in the system rather than the behavior of the offenders themselves. As an example, the size of our correctional population, which serves as the endpoint in the offender processing system, is not created solely by the action of one entity, but is the direct result of policy decisions made across the entire criminal justice system. The enactment of statutes that create new offenses or that increase the severity of the penalties for existing offenses; changes in policies regarding arrest and charging decisions; and the practices of judges all contribute to the size of the inmate population.

Although interrelated in practice, the criminal justice system by its very nature tends toward fragmentation. This fragmentation is characterized by the fact that criminal justice agencies are frequently in competition for limited funding; they operate from different perspectives and have different, though overlapping, missions; they face ongoing battles over turf-related issues; and they are controlled by all levels of government (city, county, state and in some cases, federal), each with its own distinct goals and priorities. At the National Symposium on Indigent Defense (June 2000), Laurie Robinson, former Assistant Attorney General, Office of Justice Programs, expressed her belief that collaboration is not a natural instinct for justice agencies. She further noted that justice agencies tend to guard their turf, refuse to share information and resources, and adhere to a "fiefdom mentality."

This fragmentation can be further evidenced by the historic lack of coordination and communication among justice agencies at the state and community level as they began to computerize their in-house operations. Over the years, each agency continued to focus its efforts solely on internal operational and management purposes with little attention to cross-system information sharing. As a result, incompatible systems and lack of a common language have significantly hindered access to criminal justice information across the state and negatively impacted the ability of the system to process cases in an efficient manner.

Even though fragmentation can be viewed as an inherent by-

product of our adversarial system, the situation is further compounded by many of the contemporary challenges facing justice agencies. One such challenge is that justice agencies are often forced to respond to unfunded mandates. In addition, grant and federal resources are generally applied to one component of the system without regard to the workload and financial impact on the remaining justice agencies. This fragmented approach to funding only serves to exacerbate existing workload and case processing difficulties.

Criminal Justice Planning as a Response to System Fragmentation

Many of the critical issues facing today's criminal justice system do not represent problems that can be solved, but rather conditions that require long-term systemic management. In addition, the need for criminal justice planning and coordination exists not only within the local criminal justice system and within levels of government involved in the criminal justice system, but extends to agencies that provide services in mental health, substance abuse, and vocational/educational training as we look at the special needs of offenders coursing through the system.

It should also be acknowledged that a considerable degree of "reactive" decision-making takes place on a regular basis across the entire criminal justice system. While this may allow for problem solving on an immediate and first aid basis, it does not produce lasting solutions. Only criminal justice planning can help to reduce the need for such crisis-oriented decision making by developing agreed upon policy; developing programs and strategies to implement that policy; and providing a framework for allocating resources in accordance with that plan.

Planning that occurs at the state level must also take into consideration the fact that 99% of the decisions in the criminal justice system (with the exception of parole) are made at the local level. Although one step removed from the action occurring in local criminal justice systems, it is incumbent upon criminal justice stakeholders at the state level to establish new partnerships both horizontally across state agencies and vertically with local agencies. To establish effective state-local partnerships, states must relinquish their traditional agenda-setting role and focus on providing support to communities in addressing locally defined concerns. This

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Kim Allen

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support can take the form of leadership, information, training and technical assistance, program evaluation and financial resources.

Additionally, since the development of effective criminal justice policy is rooted in the ability to obtain data on how the system operates, effective planning requires the capacity to analyze and present the criminal justice data in a

manner that promotes a common understanding and agreement by stakeholders on what the data means. Access to this type of information is critical to promote data-driven decision making and criminal justice policy.

The Role of Criminal Justice Coordinating Councils in Developing Systemic Approaches

Although Criminal Justice Coordinating Councils have received renewed attention over recent years, these planning bodies do not represent a new phenomenon. In 1967, the final report of President Johnson's Commission on Law Enforcement and Administration of Justice issued included the following recommendation:

In every state and every city, an agency, or one or more officials, should be specifically responsible for planning improvements in crime prevention and control and encouraging their implementation.

Despite their popularity during the 1970's when federal funding was available under the Law Enforcement Assistance Administration (LEAA), many of the planning councils disbanded when the funding lapsed. Of note, however, there has been a resurgence in the creation of these councils at the state and local level in response to complex issues like jail and prison crowding and substance abuse, that have no "quick fixes" and which require systemic approaches to be effective.

As its ultimate goals, a Criminal Justice Coordinating Council develops criminal justice policy and makes decisions in a manner that will ultimately improve the efficiency of the criminal justice system; improve the quality of justice; and raise the level of public confidence in the justice system. These goals can be achieved through a range of planning activities that allow for a better understanding of the nature of crime; clearer goals and priorities; effective utilization of resources; and improved coordination among the components of the justice system. In this manner, Criminal Justice Coordinating Councils provide a neutral forum for the key criminal justice stakeholders to meet on a regular basis to discuss the impact of individual agency decisions and develop balanced ap-

proaches and systemic solutions.

It must be recognized, however, that criminal justice planning and collaboration is neither a simple nor an easy undertaking. It requires criminal justice system representatives to step out of their traditional roles; to look at the entire system; to be willing to negotiate compromise; to be willing to be proactive rather than reactive; and to seek balanced and systemic approaches rather than simply looking for "knee-jerk" responses to problems that do not lend to easy solutions. Without collaboration, however, we will likely be working at odd purposes. Without funding priorities, we may not be using our resources wisely. Without data to guide decision-making, we may not be addressing the real problems. Without outcome measures, we cannot be sure that our efforts are having the desired effect.

The Kentucky Criminal Justice Council was established by statute (KRS 15A.040) during the 1998 session of the Kentucky General Assembly to serve as the central planning mechanism for the state's criminal justice system. In the long-term, the investment of energy and commitment to criminal justice planning and collaboration by each of the key players in the system clearly offers our best hope of reaching our common goals of improving overall system efficiency, restoring public confidence, and improving the administration of justice in the Commonwealth of Kentucky. ■

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PRIVATE LAWYERS PLAY AN IMPORTANT ROLE IN THE KENTUCKY PUBLIC DEFENDER SYSTEM

Ernie Lewis, Public Advocate

The Kentucky public defender system has long relied upon private lawyers who represent indigent clients often on a virtual *pro bono* basis. Kentucky began its public defender system in 1972, and the backbone of that system was the private lawyer taking a case on an assigned counsel basis. Private lawyers were assigned cases off lists from 1972 until the early 1980s, when the assigned counsel delivery method proved too costly, even at \$25 per-hour in-court and \$35 per-hour out-of-court, the going rates until 1998.

Private lawyers have continued to play a vital role since the abolition of the assigned counsel system in 1982. Since that time, there have been two delivery methods authorized by law in Kentucky. First, services have been delivered by the contract method. Private lawyers have been contracting with the DPA, and sometimes with their individual fiscal court, to provide public defender services for a fixed rate.

The second method has been the full-time public defender in either a single or multi-county office. In Kentucky, most full-time attorneys are state merit employees. In three counties, Boyd, Fayette, and Jefferson, the full-time attorneys are employees of a nonprofit organization that contracts with the Commonwealth to provide public defender services.

The Growth of the Full-Time System

Since 1990, the expansion of the full-time system has been a goal of the Public Advocacy Commission. As Public Advocate, I have made the completion of the full-time system my top priority. *The Blue Ribbon Group* and the Kentucky Criminal Justice Council have both endorsed the completion of the full-time system. In 1996, there were 47 counties being covered by full-time lawyers in single or multi-county offices. 73 counties featured contract systems. In the 1998 and 2000 General Assemblies, funding was provided to expand the reach of the full-time system. By January of 2001, 104 counties will be covered by a full-time office. By the end of the present biennium, 109 counties will have public defender services provided by a full-time attorney located in one of 27 full-time offices. The completion of the full-time system is now within reach by 2004.

The Role of the Private Lawyer in the Full-Time System

Does that mean that private lawyers will have no role to play in the provision of public defender services once the full-time system is completed? Far from it. As I envision the Kentucky public defender system of the 21st Century, we will have full-time offices which are adequately staffed with reasonably paid and trained attorneys providing excellent services to clients appointed by the court. This system will be supplemented by private lawyers on contract with DPA to provide services where the local office has a conflict of interest or other exigency, such as an emergency staff vacancy. By some estimates, conflicts occur in 5% to 10% of all cases. DPA represents approximately 100,000 clients per year. By this calculation, private lawyers will be needed in as many as 5000 to 10,000 cases per year.

Private lawyers are needed as well in the post-trial area. For many

years, private lawyers have been representing appellate clients in the appellate courts through the "of-counsel" system. Private lawyers are also representing clients, particularly in capital post-conviction, where there exists a conflict of interest. It is expected that private lawyers will continue to play a significant role in post-trial as well as trial cases in the future.

There is Unfinished Business

There is unfinished business for the 2002 General Assembly. While private lawyers play an important role, even in the full-time system, they must be adequately compensated in order to provide reasonably effective assistance to their clients.

The *Blue Ribbon Group* found that "compensation for private bar members who are appointed to conflict cases is among the lowest in the country." Among the \$11.7 recommended by the *Blue Ribbon Group* to be added to the DPA's General Fund budget was \$294,600 additional for private lawyers providing services in situations of conflicts of interest. Unfortunately, the 2000 General Assembly was able to locate money to only partially fund all of the recommendations of the *Blue Ribbon Group*. \$4 million was allocated in FY 01, and \$6 million was allocated in FY02. Of the \$10 million over the biennium, only \$300,000 was allocated to improve the compensation for private lawyers providing services in conflicts of interest cases. Thus, the situation found by the *Blue Ribbon Group* continues. Private lawyers today are providing services in conflicts of interest situations often for a sum that fails to pay for their overhead.

DPA plans to address this situation in the 2002 session of the General Assembly as part of its overall effort to complete the recommendations of the *Blue Ribbon Group*. DPA will be asking the 2002 General Assembly to complete the full-time system during the 2002-2004 biennium. Remaining are 11 counties to be covered from 3 additional offices. Once these offices open, Kentucky will have completed its full-time system.

However, in order to complete the system fully, DPA will also be asking for additional monies to fund the conflict system for private lawyers. Private lawyers must be paid a reasonable amount when they assist Kentucky's indigents in conflict of interest situations. Private lawyers need to be paid a minimum of \$50 per hour for their work, including both out-of-court and in-court work. Private lawyers must be paid in an amount that will pay for their overhead and that will compensate them for the time they spend in representing their clients. Only by doing this can we complete the public defender system for the 21st Century. ■



Ernie Lewis, Public Advocate

The Gault Initiative

Providing individualized, effective, and caring legal representation to Kentucky's indigent youth through comprehensive education, systematic support, and innovative use of technology.

The field of juvenile law is an energized, exciting area of practice which, due to the limited amount of caselaw and the ever-changing juvenile code, allows attorneys to practice creative, problem-solving law. Unfortunately, it has traditionally been viewed as a proving ground for young attorneys, merely a stepping stone toward the practice of “real” criminal law. This view coupled with enormous caseloads led to a crisis in providing quality representation in Kentucky’s juvenile proceedings.

Recognizing the importance of quality education for juvenile practitioners, the 1998 General Assembly provided funds for the Department of Public Advocacy (DPA) and a new Assistant Director of Education and Development whose primary responsibility is to increase education in juvenile representation at the trial level. The *Gault Initiative* was created by the Department of Public Advocacy to address this issue. This article outlines the problem and the efforts undertaken so far by the DPA.

The Problem

“Young people charged with delinquency offenses need effective representation to ensure that they are not held unnecessarily in secure detention, improperly transferred to adult criminal court or inappropriately committed to institutional confinement. They need the active assistance of counsel to properly challenge prosecution evidence and to present evidence in their behalf. If the charges against them are sustained, they need effective representation to assure that the disposition order is fair and appropriate to their individual need. If they are incarcerated, they need access to attorneys to help respond to a myriad of post-dispositional legal issues.” (*A Call for Justice: An Assessment of Access to Counsel and Quality Representation in Delinquency Proceedings*, ABA Juvenile Justice Center, Juvenile Law Center, and Youth Law Center, p. 4, (1995))

In 1995, the national report “A Call for Justice: An assessment of Access to Counsel and Quality Representation in Delinquency Proceedings” painted a bleak picture of the quality of juvenile representation in the United States.

A Kentucky study, “*Beyond In Re Gault: The Status of Juvenile Defense in Kentucky*”, conducted by the Children’s Law Center recognized the need to upgrade Department of Public Advocacy’s education for full-time and contract attorneys who

represent children. The study made the following findings relevant to DPA’s education effort:

- DPA should reassess its allocation of resources to ensure that juveniles receive a fair and equitable portion of funding and other available resources as compared with adult offenders.
- Attorneys representing juveniles in public and status offense proceedings should receive comprehensive education on juvenile court practice, treatment issues, criminal law, and other special matters relating to the representation of children.
- All contract attorneys who take juvenile cases should be required to complete juvenile education similar to that of full-time DPA attorneys.
- Courts, bar associations and state agencies such as DPA should adopt minimum standards for representation of juveniles in juvenile court which include at a minimum

DPA responded to this study by requesting resources necessary to meet these deficits. The General Assembly has provided funding to address the problem. In addition to the creation of the position to increase the quality of education, funding was made available to hire six new trial attorneys in existing full-time offices to focus on juvenile representation, two juvenile appellate lawyers, and two Master level social workers.

Needs Assessment

The DPA undertook an extensive needs assessment process focusing on the areas most needing education and the methods of education to be utilized has also been conducted through the use of surveys and focus groups. This needs assessment consisted of interviews with a Department of Juvenile Justice Focus group and juvenile practitioners, surveys of district court judges and juvenile practitioners throughout the Commonwealth and a literature review of previous studies in this area.

The needs assessment identified three primary areas for focus:

- I. Providing the court with dispositional alternatives. In other words, answering the question, “What can we do to help these kids?”;
- II. Providing attorneys with education on particular difficult areas of juvenile practice, such as sex offenders, transfer

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- hearings, and special education; and
- III. Teaching attorneys the skills needed to better communicate with their juvenile clients.

The assessment also indicates that the education must be provided using a variety of methods with an emphasis on hands on education with other attorneys on real life cases.

The crisis in Kentucky's juvenile law cannot be solved merely through an increase in education programs. The solution must also address adjusting the attitude of and toward juvenile practitioners, providing the support structure to serve individual clients and creating the time to fully involve clients, their families and their communities in shaping a better future.

Elements of the Gault Initiative

Co-Counseling Cases

Attorneys rated working with an experienced attorney as one of the most effective learning methods. With the creation of the new Assistant Director of Education and Development (A.D.) position, the department now has an individual with the time set aside to provide one-on-one assistance to attorneys. The A.D. has assisted and co-counseled numerous cases throughout the Commonwealth since the beginning of The *Gault* Initiative and continues to provide co-counseling in ongoing cases.

Case Reviews

Case reviews with other juvenile attorneys can dramatically increase the quality of representation in the case reviewed by increasing the wealth of knowledge and experience brought to the case. Case review also provides for a learning opportunity for all of the attorneys involved as they share ideas for strategy, motion practice and disposition.

As part of The *Gault* Initiative, case reviews involving experiences trial attorneys and members of the Juvenile Post Dispositional Branch are taking place as a routine preparation for complex juvenile cases.

Regional Juvenile "Summits"

An annual "Summit" of juvenile practitioners is held in each of the five DPA trial division regions. Prior to the Summit a needs assessment is conducted for that region and seminars are offered in subjects most requested by members of the region. The Summit is led by the DPA Regional Manager and the region's Juvenile Specialists working with the Assistant Director of Education and Development. In addition to offering relevant, needed education, the Summits will provide another forum to discuss common problems and solutions to those problems. To date, five Summits have been conducted involving over 75 juvenile practitioners with DPA's Juvenile Post Dispositional Branch contributing greatly to the effort.

Knowledge Management

DPA technology is being utilized to provide information, to quickly seek help from others, and to review recent caselaw

and changes in the Juvenile Code. The Juvenile Law Manual and motions collected from around the Commonwealth and are available through DPA's Intranet. A Dispositional Alternative Bank has been created to allow attorneys to quickly search for treatment specific to their client's needs. An e-mail discussion group has been created to facilitate discussion of juvenile issues and sharing of motions and articles. This group currently has 98 members and has had 847 messages since its creation. It has served as a model for a national group created by the American Bar Association



Jeff Sherr

Other education efforts include a 3-day program for newly hired attorneys, a special track for juvenile practitioners at DPA's Litigation Practice Institute and Annual Seminar.

Conclusion

Anecdotal evidence from attorneys and the increasing sophistication of the level of discussion at the juvenile summit and on the e-mail discussion group show a significant improvement in the level of practice. As The *Gault* Initiative continues additional studies will be conducted to examine its success and plan for future effort. ■

"Whether it is a minor or an adult who stands accused, the lawyer is the one person to whom society as a whole looks as the protector of the legal rights of that person is his dealings with the police and the courts."

Fare v. Michael C., 442 U.S. 707, 719 (1979)

DPA REVENUE REPORTED FOR FY 2000: LITTLE GROWTH SHOWN

Ernie Lewis, Public Advocate

The 2000 *DPA Revenue Report* is in for the money generated from clients, and it shows that there has been little growth in the revenue collected. The total revenue collected was \$3,066,573 in FY 00. This was up from \$2,947,212 in FY 99, a growth of only 4%.

The 1998 General Assembly had given DPA permission to spend \$3.9 million in revenue to fund necessary programming in FY 99. Revenue partially funded many of the trial offices, including the Elizabethtown, Covington, and Bell County Offices, the Louisville and Lexington Offices, the Capital Post-Conviction Branch and the Capital Trial Branch. DPA, however, did not collect \$3.9 million to meet those expenses, and thus needed additional funds from the 2000 General Assembly to cover the cost overrun. Indeed, until FY 00, DPA had never collected over \$3 million in revenue. Recognizing that fact, the 2000 General Assembly lowered the spending level funded by revenue to \$3 million during the next biennium, and moved the other program funding into the General Fund. The wisdom of that move has been made clear by the FY 00 figures showing that DPA raised a little over \$3 million. So long as the revenue level continues at the present pace, DPA will be able to balance its budget, although any hope of expanding programs to meet needs which arise will hinge on raising additional revenue.

DPA has a budget of \$26,272,500 for FY 01. Of that figure, \$2,971,600 comes from revenue, while \$22,392,500 comes from the General Fund. \$908,400 is allotted from federal sources to fund the Protection and Advocacy Division.

In order to understand the revenue picture for DPA, each fee should be examined.

The Administrative Fee

First, DPA receives \$50.00 of the \$52.50 administrative fee established in KRS 31.051. \$2.50 of the fee goes to the circuit clerk for hiring new clerks and salary adjustments. While this fee is mandatory, it is assessed and collected historically in fewer than 20% of the cases. In FY 00, the fee collected was \$873,526. This does not include the \$2.50, which goes to the circuit clerk. If each of these fees represents a \$50 assessment, that would total 17,470 cases in which fees have been assessed and collected. This was an increase of 7.7% over 1999, when \$810,473 was collected.

This should be DPA's best source of revenue. As envisioned, \$52.50 would be collected in a majority of the 100,000 cases annually. Potentially, this funding source could generate over \$5 million per year. However, this past year, the best year in the history of the administrative fee, featured a collection in only 17% of DPA's total cases, and 18.3% of the trial level cases (based upon the assumption the \$50 is being collected in each case. It is understood that some of the fees are collected in increments). Both assessment and collection problems have plagued its history, and it has failed to grow into its full potential.

Recoupment

DPA also receives recoupment, or monies from people adjudged by the appointing court to be partially indigent. KRS 31.120(4). Traditionally, this money has been sent by the Finance and Administration Cabinet to local county public defender systems with DPA acting as a pass-through. While recoupment is still used to fund local programming, the amount collected in each county does not necessarily return to fund that particular county program. DPA will have 104 counties covered by a full-time office by January of 2001. As DPA becomes a full-time system, recoupment is being used increasingly to fund the entire public defender system.

In FY 2000, \$1,000,001 in recoupment monies were ordered by the court and paid by partially indigent clients. This represented a decline of 1% from FY 99, when \$1,011,468 was raised. One reason for this decline may be due to private lawyers on contract no longer being the primary deliverer of services throughout Kentucky. As a result, local judges may not have as much of an incentive to review the defendants' status in an effort to discover whether they are fully or only partially indigent. Another reason for the decline may be the increasing number of ancillary fees, including the recently passed jail fee, imposed upon jailed and incarcerated defendants.

The DUI Service Fee

The third fee received by DPA is the 25% of the DUI Service Fee. In FY 2000, \$1,193,044 was raised from the collection of this fee. This represented a slight growth of 1.9% over FY 99, when \$1,169,870 was raised. This fee is expected to rise over the biennium. As of October 15, 2000, the service fee has been increased by \$50, so that DPA's share will rise an additional \$12.50. The 2000 General Assembly saw this as a way

to pay DPA for its share of the new cases generated by the new .08 DUI statute. Because this fee does not depend upon a specific assessment by the court, and because many of the people who are convicted of DUI are not indigent, this has been and will continue to be a relatively reliable source of revenue for the Kentucky public defender system.

Other Trends

It is apparent from the *DPA Revenue Report* that revenue in Kentucky has stabilized at approximately \$3 million annually. It is also clear that the unfinished business of the *Blue Ribbon Group* will require additional General Fund monies in the FY 2002 budget.

Some counties continue to assess and collect the administrative fee exceptionally well. Boone County raised \$21,143 in the administrative fee, which would be 422 of its 818 cases (51%). Campbell County collected \$22,246, or 444 of its 1389 cases (31%). Christian County collected \$39,203, or 784 of its 2958 cases (26%). Floyd County collected \$24,535, or 490 of its 1036 cases (47%). Graves County collected \$23,203, or 464 of its 1316 cases (35%). Hardin County collected \$37,319, or 746 of its 2768 cases (26%). Fayette County collected \$100,846, or 2016 cases, which amounts to 30% of the cases in which they were involved.

It continues to be difficult to collect the administrative fee in other counties. For example, in Jefferson County, despite numerous efforts on the part of the courts and the clerk's office to improve this situation, only \$24,673 was collected in administrative fees. That would amount to 493 of the 24,495 cases (2%). Jefferson County collected only 5% of the total revenue, adding together all three fees, despite having approximately 25% of the total cases for DPA. On the other hand, Jefferson Fiscal Court contributes \$1,225,000 to the public defender system in Louisville, the most significant contribution in the Commonwealth by a county government.

Other counties demonstrate a similar difficulty. Davies County collected \$21,600, or 432 out of 2917 cases (14%). Henderson County collected \$10,565, or 211 out of 1725 cases (12%). Madison County collected \$10,078, or 201 of 1303 cases (15%). Clark County collected \$3365, or 67 of 683 cases (9%). And Pike County collected \$3714, or 74 out of 1222 cases (6%). There are many other examples.

Closing

DPA has made a commitment to collect appropriate levels of revenue as part of its overall budget. The *Blue Ribbon Group* recognized that collecting monies from clients has a place in funding an indigent defense delivery system. Recommendation #7 reads "The Department of Public Advocacy and the Court of Justice must increase their efforts to collect reasonable fees from public defender clients, including considering the use of private collection organizations." DPA has taken

the advice of the *Blue Ribbon Group* and is working to continue to collect responsibly these three revenue funds. DPA has a personal services contract with a Jefferson County law firm in an experiment to see whether revenue can be increased in that county through the use of a private collection firm. DPA also sends out quarterly letters to all judges in the Commonwealth, both Circuit and District, reporting on the revenue picture in their county and all other counties in the Commonwealth, and urging responsible assessment and collection of revenue. DPA is committed to continuing these efforts to maximize contributions from clients consistent with due process and KRS Chapter 31.

Policy makers in Kentucky are gradually realizing that revenue to benefit the Kentucky public defender system plays a necessary but also a limited role. The *Blue Ribbon Group* in Finding #3 states that "The Department of Public Advocacy is effective in indigent defense cost recovery compared to other states." The narrative of the *Blue Ribbon Group Report* goes on to state that "Kentucky is among the most successful of all the states in the collection of alternative sources of revenue. Kentucky collects more revenue from defendants than any other state. Kentucky collects more on the administrative fee than any other state. Unfortunately, the supplemental monies available from the alternative revenue sources have not solved the funding needs of the DPA...It is our strong belief that these revenue funds are virtually tapped out. In fact, there are over 50 legislative requirements for court fees, costs, restitution, fines, etc., having to do with criminal and civil cases."

Policy makers in Kentucky, including DPA, must be realistic about the extent to which revenue can be made to grow. At the same time, DPA and its leaders must continue to work with the Court of Justice to see that revenue continues to be collected in a responsible and appropriate manner. ■

"The right to representation by counsel is not a formality. It is not a grudging gesture to a ritualistic requirement. It is the essence of justice."

Kent v. United States, 383 U.S. 541, 561 (1966)

Public Supports Salary Parity For Kentucky Prosecutors and Defenders

*University of Kentucky Survey Research Center Spring Report Shows 85% Support for Parity
Ed Monahan, Deputy Public Advocate*

Public Strongly Supports Salary Parity

An overwhelming number of people believe that prosecutors and defenders should receive equal pay. Recently, 85% of those polled in Kentucky said that prosecutors and defenders with the same level of experience should receive the same level of pay for working on the same type of cases. *The Spring 2000 Kentucky Survey*, which was conducted by the University of Kentucky Survey Research Center, asked the following question with the following results:

Do you think Kentucky prosecutors and Kentucky public defenders with the same level of experience should receive the same level of pay for working on the same type of cases?

Yes.....906.....84.7%

No.....93.....8.7%

Do not Know.....68.....6.4%

Refused to Answer... 3.....0.3%

The margin of error of the poll is approximately $\pm 3\%$ at the 95 % confidence level. Households were selected using random-digit dialing, a procedure giving every residential telephone line in Kentucky an equal probability of being called. There were 1,070 non-institutionalized Kentuckians 18 years of age or older surveyed from May 18 – June 26, 2000.

These results make sense. Over 8 in 10 people in Kentucky believe defenders and prosecutors of the same experience doing comparable work should be paid the same in all likelihood because people know a level playing field is essential for the criminal justice system to do its job with validity and reliability. The recent wave of national releases of innocent persons wrongly convicted is all the more reason for public sentiment for equality of pay. Kentucky's William Gregory in Louisville in July 2000 became the first convict in Kentucky and the 74th in the United States and Canada to be released as a result of exoneration by DNA evidence. The public wants confidence in their criminal justice system. Kentuckians want fair process and results that are correct when the life or liberty of a fellow citizen is at stake. Equal pay for defenders and prosecutors contributes to meeting the public's demands for an equitable system that produces valid results that can be relied on.

Kentucky's History of Underfunding. For decades Kentucky has paid some of the poorest salaries among the 50 states to their public defenders. The reason is that over the years Kentucky's defender system has been one of the lowest funded defender programs in the nation utilizing the two recognized benchmarks: funding-per-case, and funding-per-capita. Funding for the Kentucky defender program and salaries for its defenders are changing through the combined leadership of Kentucky Governor Paul Patton, our General Assembly, the Public Protection and Regulation Cabinet, the Personnel Cabinet, and The *Blue Ribbon Group on Improving Indigent Defense in the 21st Century* (BRG).

THE BLUE RIBBON GROUP ENDORSES HIGHER SALARIES The *Blue Ribbon Group* looked at what defenders were paid in other states. In 1999, the average entry-level salary for public defenders in the 23 states studied by the BRG's consultant, The Spangenberg Group, was \$32,396. In view of these facts, the BRG made the following

Finding and Recommendation on salaries:

Finding No. 6: The Department of Public Advocacy Ranks At, or Near, the Bottom of Public Defender Salaries Nationwide for Attorneys at All Experience Levels

Recommendation No. 4: Higher Salaries Should Be Paid to Defenders and Prosecutors; Salary Parity is the Goal.

Defender Salaries Substantially Increased. Responding to the Governor's endorsement of the BRG Recommendation on salaries, the 2000 budget of the Kentucky General Assembly provided substantial increases for public defender salaries across Kentucky. That budget includes \$1.2 million for the first year and \$2.6 million for the second year of the biennium to improve the salaries of public defenders statewide at the entry level and throughout the higher classes. The original budget request based upon the salary recommendation of the *Blue Ribbon Group* was for a 30% increase in the salary of each defender. DPA requested 15% increase each year of the biennium. The press widely reported that the 2000 General Assembly funded 15% salary raises. Unfortunately that is not the case.

DPA has worked with the Governor's Office of Policy & Management (GOPM) and the Personnel Cabinet to determine how much the salary raises will be for defenders in view of the money provided. The starting salary for a public defender has been increased from \$23,388 to \$28,485.60 during the first year of the biennium and will be \$30,593.54 during the second year of the biennium. This allows DPA to pay more reasonable entry level salaries, and should assist in the recruiting and retention of new lawyers. All other defenders received an 8% increase in salary this year. This assists in reducing turnover of senior staff.

"Public defenders are some of the hardest working public servants in Kentucky," Erwin W. Lewis, Public Advocate and 23-year public defender veteran said. Lewis observed that, "For far too long, Kentucky defenders have labored under heavy caseloads and the lowest salaries in the nation. This salary increase is far overdue and will go a long way toward enabling our good workers to make a living wage and support their families. By raising these salaries, the Department of Public Advocacy is in a much better position to recruit high quality attorneys, and will be able to retain attorneys longer thereby increasing the quality of the service to the clients and courts of Kentucky. I am very appreciative of Governor Paul Patton, the General Assembly, the *Blue Ribbon Group*, the Public Protection and Regulation Cabinet and the Personnel Cabinet for making these raises possible."

Prosecutors Still Earn More. The *Blue Ribbon Group's* Recommendation No.4 that "Salary Parity is the Goal" has not yet been achieved. Assistant Commonwealth Attorney's funded by the Unified Prosecutorial System now have starting salaries of \$32,500 for their full-time prosecutors, \$4,000 more than defender starting salaries this year. A full-time Commonwealth's Attorney earns \$84,722.68 per year. Part-time Commonwealth Attorneys earn \$50,833.61.

Parity is the Goal. Kentucky has set itself on a course to provide salary parity for defenders and prosecutors, as the public desires.



Loan forgiveness remains a serious unmet need for both Kentucky defenders and prosecutors. Kentucky public defenders have large student loans. In 1999, 35 of Kentucky public defenders had average student loans of \$39,000. As of September 2000, 41 of Kentucky public defenders have average student loans of \$35,366. The loans of these Kentucky defenders range from \$10,000 to \$87,500. Attorneys hired by prosecutors have substantial student loans. Jefferson Commonwealth Attorney **Dave Stengel** talked about the need for a loan forgiveness program to facilitate recruiting and retaining quality prosecutors in the competitive legal market, "It is normal that legislation of any significance such as a student loan forgiveness bill requires several attempts before passage. I am confident that our legislative sponsors during the next session will give such a bill top priority. I have advised my staff that I will continue this fight for student loan forgiveness plan and that I will make it top priority during the session. I believe that a student loan forgiveness schedule is essential for us to attract and keep top quality young prosecutors, just as I am sure that DPA needs such legislation to keep effective young defenders."

R. David Stengel

Recruiting and Retaining Quality Defenders and Prosecutors Is Difficult

The combination of low salaries and high student loans has made recruiting entry-level attorneys difficult. Salaries are on the rise for defenders but student loans are an area that remains a disincentive for many who want to be a defender from taking a position with DPA. Because experienced public defender attorneys are not compensated similarly to either prosecutors or public defenders in other jurisdictions, retaining experienced attorneys has also been a problem for DPA.

Student Loan Forgiveness for Prosecutors and Defenders Recommended

In light of these problems, the Kentucky *Blue Ribbon Group on Improving Indigent Defense in the 21st Century* (BRG) made the following Recommendation:

Recommendation No. 5: Loan Forgiveness Programs Should Be Made Available to Prosecutors and Defenders.

Representative Wilkey's House Bill 918

Both prosecutors and defenders looked to the 2000 General Assembly to create a student loan program for defenders and prosecutors. Commonwealth Attorney David Stengel and

Student Loan Forgiveness For Prosecutors and Defenders

Ed Monahan, Deputy Public Advocate

Public Advocate Ernie Lewis worked with Representative Rob Wilkey (D. Franklin), Vice Chair of the House Judiciary Committee, who introduced House Bill 918 into the House Judiciary Committee on February 29 of the 2000 General Assembly. It was cosponsored by Speaker Pro Tem Larry Clark (D. Louisville) and Representative Mary Lou Marzian (D. Louisville). It was referred to the House Appropriations and Revenue Committee on March 1, 2000. Unfortunately, HB 918 did not get called for a vote in Committee.

The bill created the Criminal Justice Loan Assistance Trust Fund provided for the repayment of student loans of Assistant Commonwealth Attorneys, Assistant County Attorneys, and Public Defenders by creating a \$5.00 court cost in criminal cases and establishing a program supervised by the Kentucky Higher Education Assistance Authority. It required eligible attorneys to commit through signed agreement to two-year increments of employment and paid for law school loans.

Loan Forgiveness Program will Improve Criminal Justice System

Loan forgiveness for prosecutors and defenders remains an unmet need in Kentucky. The creation of a program to assist public servants doing public defender and prosecutor work will attract and retain the best and the brightest in our criminal justice system and provide for justice that is efficient and effective for the people of Kentucky. Public Advocate Ernie Lewis is very interested in a loan forgiveness program because of its affect on the way the people's business is done in Kentucky courtrooms day in and day out, "Public service is one of the lawyer's highest callings. We do the public's business both prosecuting and defending. It is essential that we attract high quality lawyers to perform this noble function. Our ability to do that is threatened by the high price of law school accompanied by enormous student loans carried by graduating law students. It is essential that Kentucky address this problem soon." ■



Ed Monahan, Deputy Public Advocate

ANNUAL CASELOAD REPORT DEMONSTRATES OPPORTUNITY TO LOWER CASELOADS FOR INDIVIDUAL PUBLIC DEFENDERS

Ernie Lewis, Public Advocate

The Importance of Caseload Data

The DPA relies extensively upon caseload data. This data is used primarily to manage and supervise offices, to make case assignments, and most importantly, to staff offices. Because DPA has been chronically underfunded for so long, it has been essential to divide scarce public monies in a fair manner. Caseload data has been the cornerstone of that effort.

How is a case defined?

Because of the importance placed on the management use of caseload data, DPA does not use the same caseload definitions as other parts of the criminal justice system. Rather, a case is defined conservatively in order truly assess individual attorney's caseloads, and to establish office staffing patterns.

DPA has used the same definition at the trial level since the mid-1980s. The definition is, part, as follows: "A case consists of a single accused, having either under the same or different case number(s), one or more charges, allegations, or proceedings arising out of one event or a group of related contemporaneous events...."

The Post-Trial definition of a case is more complicated due to the many different kinds of cases handled in the 5 different Post-Trial Division branches. Each branch has developed a caseload definition that stresses the management use of the caseload data.

The Importance of a Reasonable Caseload

A reasonable caseload is essential for a public defender. With a reasonable caseload, a well-trained public defender can provide effective assistance of counsel to her clients. With an excessive caseload, clients become numbers, investigation becomes impossible to perform, motion practice becomes rare, and individualized attention to the needs of the client is replaced with a conveyor belt. With a reasonable caseload, public defenders can provide an important service to the courts, appearing on a timely basis prepared to proceed, appearing in all courts required, prepared to go to trial within a reasonable time, and able to ensure the reliability of indi-

vidual verdicts. With an excessive caseload, courts are ill served, courts' dockets become difficult to move, verdicts are unreliable, and timely justice is delayed.

Standard 4-1.3(e) of the ABA's *Standards Relating to the Administration of Criminal Justice* puts it this way: "Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations."

The *Blue Ribbon Group* Identified Excessive Caseload as a Big Problem

High caseloads are the stereotypical problem of the public defender. Unfortunately, Kentucky's public defender system has for far too long met the stereotype.

The *Blue Ribbon Group* identified excessive caseloads as one of the primary problems in the Kentucky public defender system. Finding #5 reads: "The Department of Public Advocacy Per Attorney Caseload Far Exceeds National Caseload Standards."

National caseload standards were identified by the *Blue Ribbon Group* as coming from the National Advisory Commission which published these standards in 1973, standards which have stood the test of time: "The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25."

In 1999, at the time of the writing of the *Blue Ribbon Group Report*, the BRG found that "[w]hile the NAC standards do not make specific recommendations for public defenders who, like those with the DPA, handle mixed caseloads, it is clear that the DPA numbers far exceed those contemplated by the NAC."

In response to this problem, the *Blue Ribbon Group* in Recommendation #6 stated that "Full-time Trial Staff Should Be

Increased to Bring Caseloads Per Attorney Closer to the National Standards. The Figure Should Be No More Than 350 in Rural Areas and 450 in Urban Areas.” The *Blue Ribbon Group* recognized that this goal, while not quite comporting with the NAC Standards, was a goal that should be achievable within a short period of time, and could be reached if \$11.7 million were added to the budget for DPA each year of the biennium.

The 2000 General Assembly Was Able To Reduce Caseloads Only Partially

The *Blue Ribbon Group* recommended \$11.7 million in new General Fund dollars each year of the biennium. This would have enabled DPA to lower its trial attorneys’ caseloads to 450 per lawyer per year (a mixed caseload of felonies, juveniles, and misdemeanors) in urban areas, and 350 per lawyer per year. The difference in caseload recommendations was primarily due to the problem of travel experienced by the rural defender.

The 2000 General Assembly was able to fund partially the recommendations of the *Blue Ribbon Group* by including \$4 million in FY01 and \$6 million in FY02 into the DPA budget. Rather than the 35 new caseload-reduction lawyers, funding was provided for 10 new lawyers. However, money to hire these lawyers is available only in April of 2002. Thus, no real caseload reduction will occur until the last quarter of the biennium.

There is Some Good News in the 2000 Annual Caseload Report

Heavy caseloads are a ticking time bomb for DPA. If DPA’s caseloads go up significantly during the biennium, much of the progress that has taken place over the past 4 years will prove to be illusory.

Fortunately, DPA has good news to report for the fiscal year just completed. DPA’s *Annual Caseload Report, Fiscal Year 1999-2000* has just been released. Among the findings are the following:

- DPA’s total caseload shows a slight decline, from 101,732 in FY 99 to 97,818 in FY00.
- DPA’s average caseload per attorney at the trial level dropped from 475 in FY99 to 428 in FY00.
- The Louisville Public Defender’s Office has experienced a significant decline in attorney caseload. That office has suffered from excessive caseloads for many years. At the time of the *Blue Ribbon Group Report*, it was stated that in “FY 1998, attorneys in Louisville handled an average of 700 cases...” In FY99, the caseload per lawyer was 603. In FY 00, the caseload per lawyer declined to 471, or within reach of the goal of 450 set by the *Blue Ribbon Group*.
- The Lexington Public Defender’s Office caseloads are under control for the second straight year. In FY 99, the

average caseload per lawyer was 382. This has risen only slightly to 396.

- Many of the DPA offices are now within reach of the 450/350 goal, including Bell County, Boyd County, Covington, LaGrange, Lexington, Madisonville, Paintsville, Pikeville, Richmond, Stanford, and Stanton.
- The increase in DPA’s budget from 1998-2000 along with a decrease in the overall crime rate during the same period has allowed DPA to make additional progress on reducing excessive public defender caseloads.

There Remain Significant Problems

- Many of DPA’s offices continue to suffer from excessive caseloads. The problem areas identified in the FY00 Annual Caseload Report include the following offices with their excessive average per-attorney caseloads: Bowling Green (842), Columbia (581), Elizabethtown (537), Frankfort (554), Hazard (513), Henderson (532), Hopkinsville (546), Owensboro (725), and Paducah (520). These heavy caseloads in some cases are 200% above the national standards, and threaten to topple the individual offices.
- DPA’s cost-per-case has risen to only \$216, up from \$210 in FY 99. The goal remains \$300 per case in this benchmark in order to bring DPA to the middle of the surrounding states as of 1998. DPA will have to await the next two years’ annual reports which will include the additional \$10 million funded by the 2000 General Assembly over the biennium.

There is Unfinished Business: Caseload Reduction

It is my goal as Public Advocate to complete the building of the Kentucky public defender system for the 21st Century by 2004. It is clear that excessive public defender caseloads remain an impediment to the completed project.

However, the flat lining of the crime rate, and the resulting slight decline in the overall public defender caseload, particularly at the trial level, holds promise. The promise is that the increase in caseload that we have experienced over the past two decades will not continue, that the caseloads will continue to level out, and that reasonable caseloads will be within the reach of the 2002 General Assembly.

DPA will make every effort to have the recommendations of the *Blue Ribbon Group* fully funded in the 2002 General Assembly. One of the cornerstones of that effort will be the effort to have every public defender with a reasonable caseload by 2004. This can and should be accomplished in the 2002 General Assembly. ■

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Legislative Update

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